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No. 05-1541

In the Supreme Court of the United States

EC TERM OF YEARS TRUST, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether a party who would have been entitled to commence a timely action under 26 U.S.C. 7426(a)(1) to challenge an allegedly wrongful Internal Revenue Service levy upon its property to collect taxes owed by another, but failed to commence such an action within the applicable limitation period, may seek a refund of the amount collected by the levy through a tax-refund action under 28 U.S.C. 1346(a)(1).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-7a) is reported at 434 F.3d 807. The opinion of the district court (Pet. App. 8a-18a) is not published in the *Federal Supplement*. An earlier opinion of the district court (J.A. 11-22) is not published in the *Federal Supplement* but is available at 2004 WL 911307.

JURISDICTION

The judgment of the court of appeals was entered on January 3, 2006. A petition for rehearing was denied on March 2, 2006 (Pet. App. 19a). The petition for certiorari was filed on May 31, 2006, and granted on October 27, 2006. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The pertinent statutory provisions are set forth in an appendix to this brief. App., *infra*, 1a-15a.

STATEMENT

1. a. If a person liable to pay any tax fails to pay the tax, the Internal Revenue Service (IRS) may collect the tax by levy upon all property or rights to property belonging to that person, including property nominally held by a third party. 26 U.S.C. 6330, 6331. If a third party claims an interest in the levied property, the third party may bring an action for wrongful levy under 26 U.S.C. 7426. Section 7426(a)(1) creates a specific remedy for "any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property" to challenge an allegedly wrongful IRS levy. 26 U.S.C. 7426(a)(1).[1] A wrongful-levy action under Section 7426(a)(1) may be brought "without regard to whether such property has been surrendered to or sold" by the IRS. *Ibid.*

Such actions, however, are subject to the statute of limitations contained in 26 U.S.C. 6532(c). A wrongful-levy action under Section 7426(a)(1) must generally be brought before "the expiration of 9 months from the

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[1] In addition to a wrongful-levy action, Section 7426(a) creates three other types of actions. Two of those actions—to obtain surplus proceeds (see 26 U.S.C. 7426(a)(2)) or substituted sale proceeds (see 26 U.S.C. 7426(a)(3)) after property has been sold pursuant to a levy—were enacted at the same time as the wrongful-levy provisions in Section 7426(a)(1). The fourth type of action, under Section 7426(a)(4), was created in the wake of this Court's decision in *United States* v. *Williams*, 514 U.S. 527 (1995), to provide a specific remedy for certain third parties whose property is subject to an IRS lien. See note 10, *infra*.

date of the levy." 26 U.S.C. 6532(c)(1). If a third party makes a proper administrative request for the return of the levied property, the limitation period is extended for a period no more than 12 months from the date of the request. 26 U.S.C. 6532(c)(2).

b. Section 1346(a)(1) of Title 28 grants district courts jurisdiction, concurrent with the United States Court of Federal Claims, over "[a]ny civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected." 28 U.S.C. 1346(a)(1). Such a tax-refund action cannot be brought "until a claim for refund or credit has been duly filed" with the IRS. 26 U.S.C. 7422; *United States* v. *Dalm*, 494 U.S. 596, 601-602 (1990). Section 6511(a) provides that an administrative refund claim must be filed within two years from the date a tax is paid or three years from the time the return was filed, whichever is later. 26 U.S.C. 6511(a). Section 6532(a), in turn, generally requires that any tax-refund action under Section 1346(a) must be filed within two years after the date of the IRS's disallowance of the refund claim, although that period can be extended by agreement. 26 U.S.C. 6532(a)(1) and (2).

2. Petitioner is one of several trusts created by Elmer and Dorothy Cullers. J.A. 29. In 1986, the IRS disallowed loss deductions reported by the Cullers on their income tax returns for the tax years 1981 through 1984 arising out of their investment in MidContinent Drilling Associates, a partnership. J.A. 28. In subsequent litigation, the Tax Court found that the partnership was an abusive tax shelter and disallowed deductions claimed by its partners. *Ibid.*; see *Webb* v. *Commissioner*, 60 T.C.M. (CCH) 1085 (1990); *Midcontinent Drilling Assocs.* v. *Commissioner*, 67 T.C.M. (CCH)

2453 (1994). The IRS then made assessments in 1993 and 1994 of the Cullers's resulting additional income tax liabilities. J.A. 30-33.

In April 1991 and thereafter, the Cullers transferred a substantial portion of their property to petitioner. J.A. 29. In 1999, the IRS filed a tax lien against petitioner for the Cullers's unpaid 1981 through 1984 income taxes, based on the IRS's position that the Cullers had transferred property to petitioner in an effort to avoid paying their federal income taxes. Pet. App. 2a; J.A. 28-32. Although petitioner disagreed with the IRS's contentions, in August 1999, it opened a bank account for the purpose of satisfying the Cullers's unpaid tax liabilities. The IRS then levied on the account, and the bank issued a check for $3,389,426.37 on October 5, 1999, to satisfy the levy. Pet. App. 2a; J.A. 30-34.

Almost one year later, on September 7, 2000, petitioner (and other trusts created by the Cullers) filed an action against the United States pursuant to both 26 U.S.C. 7426(a)(1) and 28 U.S.C. 1346(a)(1). Pet. App. 2a, 9a. The district court dismissed the Section 7426 wrongful-levy claim, concluding that it was time-barred. The court reasoned that the action had not been filed within nine months after the challenged levy, as required by 26 U.S.C. 6532(c)(1), and that petitioner had not made a proper request for return of the property that could have extended the nine-month limitation period pursuant to 26 U.S.C. 6532(c)(2). *BSC Term of Years Trust* v. *United States*, No. EP-00-CA-270-H, 2000 WL 33155870, at *2-*3 (W.D. Tex. Dec. 28, 2000). In addition, the district court held that it lacked jurisdiction under 28 U.S.C. 1346(a)(1) because 26 U.S.C. 7426(a)(1) "affords the *exclusive* remedy for an innocent third party whose property is confiscated by the IRS to satisfy another

person's tax liability." 2000 WL 33155870, at *2 n.1 (quoting *Texas Commerce Bank Fort Worth, N.A.* v. *United States*, 896 F.2d 152, 156 (5th Cir. 1990)); see Pet. App. 3a n.3. Petitioner and the other trusts voluntarily dismissed their appeal from the district court's decision. See *BSC Term of Years Trust* v. *United States*, No. 01-50127, 2001 WL 722022 (5th Cir. Apr. 25, 2001).

3. On September 6, 2001, petitioner filed an administrative claim for refund of the amount that the IRS had collected by levy. Pet. App. 9a; J.A. 27-31. After the claim was denied, petitioner filed this second action, alleging jurisdiction under 28 U.S.C. 1346(a)(1). Pet. App. 9a; J.A. 23-25.[2] The district court dismissed the complaint on the ground that a wrongful-levy action under 26 U.S.C. 7426(a)(1) is the "exclusive remedy for those in [petitioner's] circumstances." Pet. App. 17a. The district court rejected petitioner's claim that the decision in *United States* v. *Williams*, 514 U.S. 527 (1995), overruled the "longstanding exclusivity rule" with respect to wrongful-levy claims. Pet. App. 17a. In *Williams*, this Court held that a party "who paid a tax under protest to remove a lien on her property, ha[d] standing to bring a refund action under 28 U.S.C. § 1346(a)(1), even though the tax she paid was assessed against a third party," where she had "no realistic alternative to payment of a tax she did not owe" and would

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[2] The district court denied (J.A. 11-22) the government's motion to dismiss the second action on "res judicata" grounds. The government raised both claim and issue preclusion on appeal (Gov't C.A. Br. 37-44), but the court of appeals did not address either argument. As noted in the government's response to the petition for a writ of certiorari, see U.S. Cert. Br. 3 n.2, the government does not press either preclusion theory in this Court.

otherwise have been left "without a remedy." 514 U.S. at 529. The district court distinguished *Williams* from the facts of this case, because here petitioner could have availed itself of a wrongful-levy action under 26 U.S.C. 7426(a)(1) but failed to bring a timely claim. Pet. App. 17a. The court declined to read *Williams* as holding that "third-parties, under ordinary circumstances, are no longer required to bring a wrongful levy action as such would create instability in federal government property resolutions inherent in the shortened statute of limitation applicable to such claims." *Ibid.*

4. The court of appeals affirmed. Pet. App. 1a-7a. The court noted its prior decisions holding "that if § 7426 is available to an individual, then it is his sole and exclusive remedy," and it observed that the "short statute of limitations governing claims under § 7426 allows for the expeditious resolution of tax liability." *Id.* at 4a. The court concluded that *Williams* should not be read to suggest "that a refund action under § 1346 is available *in addition* to a wrongful levy action under § 7426." *Id.* at 5a. The court further observed that "to allow an alternative remedy under § 1346, with its longer statute of limitations period, *see* 26 U.S.C. §§ 6511(a), 6532(a)(1), would undermine the surety provided by the clear avenue to recovery under § 7426." *Ibid.*

SUMMARY OF ARGUMENT

The court of appeals correctly held that petitioner cannot seek relief from an allegedly wrongful tax levy through the general tax-refund mechanism authorized by 28 U.S.C. 1346(a)(1) and thereby circumvent the limitation period applicable to wrongful-levy actions under 26 U.S.C. 7426(a)(1). Congress created a specific and carefully drawn remedy under Section 7426(a)(1) pre-

cisely for parties in petitioner's situation, and that provision constitutes the exclusive remedy for third parties whose property is levied upon to collect taxes assessed against another.

This Court has held, in a variety of contexts, that Congress's creation of a specific remedy tailored to a particular set of circumstances will foreclose resort to a more general remedy. That result is clearly appropriate when, as here, the "balance, completeness, and structural integrity" of the specific remedy suggests that it was intended by Congress to be the exclusive avenue of relief. Creation of a shorter statute of limitations for a specific remedy is a powerful indicator that Congress intended that remedy to be exclusive of other potentially available remedies with longer limitation periods. That is particularly true when the provisions at issue authorize suits against the United States, because in those circumstances the shorter limitation period defines the scope of the waiver of the United States' sovereign immunity.

Section 7426(a)(1) is a carefully drawn remedy designed explicitly for parties in petitioner's situation. The "balance, completeness, and structural integrity" of Section 7426 indicate that Congress did not intend that remedy merely to supplement other potential remedies, such as a tax-refund suit. To hold otherwise would permit petitioner to circumvent the terms and limitations of the specific remedy that Congress created precisely for third parties subjected to an IRS levy to collect the taxes of another.

Most significantly, allowing third parties to pursue a tax-refund action in addition to a wrongful-levy action would effectively "render[] nugatory" the shorter limitation period that Congress placed on wrongful-levy ac-

tions, by permitting challenges to levies to be brought well after the expiration of that statutory period. Section 7426 is part of an elaborate and comprehensive tax collection scheme that, among other things, is designed to facilitate expeditious resolution of challenges to IRS tax collection activities and to work in harmony with other, related provisions. Many courts have recognized that the short statute of limitations for wrongful-levy actions by third parties ensures that the IRS will learn promptly whether it needs to continue to pursue collection efforts against the taxpayer. Moreover, Section 7426(a)(1) was enacted by a Congress that, despite the existence of a tax-refund remedy against the United States, perceived no existing remedy directly against the United States for third parties in petitioner's situation, and that considered other potential remedies to be problematic.

The conclusion of the court of appeals here that Section 7426(a)(1) is the exclusive remedy available in petitioner's situation accords with the decisions of other appellate courts, with the sole exception of the Ninth Circuit. Although petitioner asserts that this Court's decision in *United States* v. *Williams*, 514 U.S. 527 (1995), changed this longstanding precedent and created a right for it to seek relief by means of a tax-refund suit, petitioner's reading of that decision is incorrect. *Williams* establishes only the scope of the tax-refund remedy for third parties who have no other statutory remedy; it does not speak to the exclusivity of the specific wrongful-levy action that Congress created precisely for third parties in petitioner's situation.

ARGUMENT

AN ACTION UNDER 26 U.S.C. 7426 IS THE EXCLUSIVE REMEDY AVAILABLE TO A THIRD PARTY WHOSE PROPERTY WAS LEVIED UPON TO SATISFY THE TAX DEBT OF ANOTHER

The court of appeals correctly held that the wrongful-levy provisions of 26 U.S.C. 7426(a)(1), as restricted by the applicable statute of limitations (26 U.S.C. 6532(c)), afforded the exclusive remedy available to petitioner to assert its claim. Having failed to bring a timely claim under Section 7426(a)(1), petitioner cannot circumvent the limitation period applicable to such actions by pursuing a tax-refund suit under 28 U.S.C. 1346(a)(1).

A. The Availability Of A Precisely Drawn, Specific Remedy Precludes Resort To A General Remedy

1. This Court has long recognized and "applied the rule that a precisely drawn, detailed statute pre-empts more general remedies." *Block* v. *North Dakota*, 461 U.S. 273, 285 (1983); see, *e.g.*, *Brown* v. *GSA*, 425 U.S. 820, 834-835 (1976) (citing cases); see also *City of Rancho Palos Verdes* v. *Abrams*, 544 U.S. 113, 121 (2005). In particular, the Court has found that rule to be controlling when the "balance, completeness, and structural integrity" of the specific remedy suggests that it was not merely a supplement to a more general remedy but was intended by Congress to be the exclusive avenue of relief. *Brown*, 425 U.S. at 832. In determining congressional intent in that regard, this Court has looked to the detailed nature of the specific remedy and how it interacts with other provisions. See, *e.g.*, *id.* at 831 (noting that the specific remedy included "complementary administrative and judicial enforcement mechanisms").

As this Court has explained, Congress's creation of a shorter statute of limitations for a specific remedial scheme strongly suggests that Congress intended the remedy to be exclusive of other potentially available remedies with longer limitation periods. See *Block*, 461 U.S. at 285; accord *Abrams*, 544 U.S. at 122-125. That is particularly true when the remedy is against the United States. In that context, the shorter limitation period limits the waiver of the United States' sovereign immunity with respect to the type of action covered by the specific remedy, and it indicates a congressional intent that such actions must be brought expeditiously. See *Block*, 461 U.S. at 283-285. If claimants nevertheless could pursue the general remedy, the shorter statute of limitations "could be avoided, and, contrary to the wish of Congress, an unlimited number of suits involving stale claims might be instituted." *Id.* at 285.

Although a specific statutory remedy may preclude resort to more general remedial statutes even when a broader remedy would otherwise clearly apply, see, *e.g.*, *Preiser* v. *Rodriguez*, 411 U.S. 475, 488-490 (1973), a further consideration that can buttress the exclusivity of a specific remedy is Congress's understanding, at the time it created the remedy, that claimants "had no effective judicial remedy." *Brown*, 425 U.S. at 828. Even if that understanding turns out to be "in some ultimate sense incorrect," the "relevant inquiry is not whether Congress correctly perceived the then state of the law, but rather what its perception of the state of the law was." *Ibid.* Thus, if Congress believed that it was providing a remedy where none previously existed, or where any potential remedies were "problematic," the inference to be drawn is that the specific remedy is ex-

clusive. *Block*, 461 U.S. at 285; see *Brown*, 425 U.S. at 826-828.

Accordingly, despite the "broad language" of a general remedy and "the literal applicability of its terms," this Court has repeatedly held that a remedy that has been "explicitly * * * designed" for a specific situation "must be understood to be the exclusive remedy available in a situation" where it "clearly applies." *Preiser*, 411 U.S. at 488-490 (holding that, despite the broad language of 42 U.S.C. 1983, a writ of habeas corpus was the "sole federal remedy" for challenges to the fact or duration of a state prisoner's confinement). When Congress enacts a specific remedy subject to particular limitations and requirements, it would frustrate congressional intent to permit litigants to "evade [such] requirement[s] by the simple expedient of putting a different label on their pleadings." *Id.* at 489-490.

2. Applying those principles, the Court in *Block* held that Congress intended the Quiet Title Act, 28 U.S.C. 2409a, "to provide the exclusive means by which adverse claimants could challenge the United States' title to real property." 461 U.S. at 286. In so doing, the Court rejected the availability of a so-called "officer's suit" against the federal officials who oversaw the disputed land. *Id.* at 284-285. The Court placed great weight on the fact that Congress included a twelve-year statute of limitations and other restrictions on its waiver of the United States' sovereign immunity in the Quiet Title Act, restrictions that would be "rendered nugatory" if an officer's suit was an available alternative remedy. *Id.* at 285. The Court also pointed to Congress's understanding that officer's suits were not an available remedy, *id.* at 282, or at least that "it was 'problematic' whether any judicial relief at all was available" before

passage of the Quiet Title Act, *id.* at 285. See also *United States* v. *Mottaz*, 476 U.S. 834, 841-848 (1986) (holding that a Native American could not avoid the statute of limitations applicable to an action under the Quiet Title Act by characterizing her suit as a claim under the General Allotment Act of 1887, 25 U.S.C. 331 *et seq.*, because the Quiet Title Act provided the exclusive remedy).

Similarly, in *Brown*, the Court held that Section 717 of the Civil Rights Act of 1964, 42 U.S.C. 2000e-16 (Supp. IV 1974), is the sole remedy available to a federal employee claiming to have been the victim of racial discrimination in the workplace. The Court in *Brown* concluded that, when Congress enacted Section 717, Congress was "persuaded that federal employees who were treated discriminatorily had no effective judicial remedy." 425 U.S. at 828. The Court also relied upon Section 717's "rigorous administrative exhaustion requirements and time limitations," observing that "[i]t would require the suspension of disbelief to ascribe to Congress the design to allow its careful and thorough remedial scheme to be circumvented by artful pleading." *Id.* at 833. See also, *e.g.*, *Abrams*, 544 U.S. at 127 (holding that the judicial remedy in 47 U.S.C. 332(c)(7) precluded resort to an action under 42 U.S.C. 1983 because enforcement of Section 332(c)(7) through Section 1983 "would distort the scheme of expedited judicial review and limited remedies created" by Section 332(c)(7)); *Great Am. Fed. Sav. & Loan Ass'n* v. *Novotny*, 442 U.S. 366, 375-376, 378 (1979) (holding that "deprivation of a right created by Title VII cannot be the basis for a cause of action" under 42 U.S.C. 1985(3) because otherwise "a complainant could avoid most if not all of these detailed and specific provisions of the law").

The "rule that a precisely drawn, detailed statute pre-empts more general remedies," *Block*, 461 U.S. at 285, is fully applicable in the context of challenges to the government's tax collection efforts. Indeed, given the "carefully articulated and quite complicated structure of tax laws," allowing circumvention of a specific remedy risks "destroying the existing harmony of the tax statutes." *Flora* v. *United States*, 362 U.S. 145, 157-158 (1960).

Thus, in *United States* v. *A.S. Kreider Co.*, 313 U.S. 443 (1941), this Court rejected a taxpayer's attempt to avoid the then-applicable statute of limitations specific to tax-refund actions. See *id.* at 446. Having failed to file a timely tax-refund action in compliance with that provision, the taxpayer sought to rely upon the longer, six-year statute of limitations in the Tucker Act, which applied generally to "suit[s] against the Government," including but not limited to suits "for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected." 28 U.S.C. 41(20) (1940). The Court rejected that attempt, reasoning that the shorter and more specific limitation period for tax-refund actions would have "no meaning" if the general Tucker Act limitation period governed such actions. 313 U.S. at 448. Noting that the six-year limitation was phrased in the negative (*i.e.*, providing that "[n]o suit * * * shall be allowed" unless brought within six years of accrual), the Court held that "nothing in that language precludes the application of a different and shorter period of limitation to an individual class of actions." *Id.* at 447. In so holding, the Court noted the strong federal policy behind the shorter limitation period: Congress "[r]ecogniz[ed] that suits against the

United States for the recovery of taxes impeded effective administration of the revenue laws." *Ibid.*

B. Section 7426(a)(1) Is A Precisely Drawn, Specific Remedy For Wrongful Levy And Is Therefore Exclusive

A straightforward application of the principles set forth in this Court's cases demonstrates that Section 7426(a)(1) is the exclusive remedy for third parties to challenge a wrongful levy. Petitioner could have availed itself of that remedy if it had filed its first suit in a timely fashion. It cannot now circumvent Congress's restrictions on that specific remedial scheme by resorting to a tax-refund suit.

1. Congress provided for expeditious resolution of Section 7426 (a)(1) actions, including a short limitation period

The provisions requiring expeditious resolution of wrongful-levy actions demonstrate Congress's intent to make Section 7426(a)(1) the exclusive remedy for third parties whose property has been subjected to an allegedly wrongful levy to collect the taxes of another.

a. In creating the wrongful-levy remedy in 1966, Congress selected a new, shortened limitation period that applies exclusively to suits under Section 7426. See Federal Tax Lien Act of 1966 (1966 Act), Pub. L. No. 89-719, § 110(a) and (b), 80 Stat. 1142, 1144. Section 6532(c) generally requires that actions under Section 7426(a)(1) must be commenced within "9 months from the date of the levy." 26 U.S.C. 6532(c)(1) (cross-referenced by 26 U.S.C. 7426(i)). That limitation period can be extended if the third party makes a proper request to the IRS for return of the property, but only for (at most) an additional 12 months. 26 U.S.C. 6532(c)(2).

Congress placed the limitation provision for wrongful-levy actions under Section 7426 not in Section 7426 itself, but rather in a new subsection (c) of Section 6532, which already housed the longer statute of limitations applicable to tax-refund suits generally. See 26 U.S.C. 6532(a). Thus, Congress plainly was aware of the longer statute of limitations for tax-refund actions, but intentionally chose to impose a shorter limitation period on wrongful-levy actions by third parties. Further indication that Congress viewed wrongful-levy actions as distinct from tax-refund actions and sought more expeditious resolution for the former is provided by Section 7426(f), which specifies that, unlike tax-refund suits, exhaustion of an administrative refund remedy is not required before bringing an action under Section 7426(a)(1). 26 U.S.C. 7426(f).[3]

b. At the time it enacted Section 7426 and Section 6532(c), Congress also created other provisions that work in harmony with Section 7426 to ensure, among other things, that the IRS's collection efforts are not prejudiced by the pendency of third-party challenges to IRS levies. In particular, Congress added a provision, codified at 26 U.S.C. 6503(f)(1), that suspends the running of the otherwise applicable ten-year collection period (see 26 U.S.C. 6502(a)(1)) from the date that the IRS seizes property by levy until "the date on which a judgment secured pursuant to section 7426 with respect

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[3] If, however, a third party seeks additional damages (pursuant to a provision added by Congress in 1998, see Internal Revenue Service Restructuring and Reform Act of 1998 (IRS Reform Act), Pub. L. No. 105-206, § 3102(b), 112 Stat. 730), based on allegedly reckless, intentional, or negligent disregard by the IRS of the provisions of the Internal Revenue Code, a party must exhaust the administrative remedies set forth in 26 U.S.C. 7433(d). See 26 U.S.C. 7426(h)(2).

to such property becomes final, and for 30 days thereafter." See 1966 Act, § 106(c), 80 Stat. 1140. But there is no comparable statutory provision that similarly suspends the collection period during the pendency of a tax-refund suit.

Accordingly, as the facts of this case illustrate, allowing a challenge to an IRS levy to be brought as a tax-refund suit may impede the tax collection process and disrupt Congress's carefully integrated statutory scheme. The IRS generally may collect a tax by levy or judicial proceeding within ten years after assessment. See 26 U.S.C. 6502(a)(1). Here, for example, the IRS levied on petitioner's property in 1999 to collect taxes assessed in 1993 and 1994 for the Cullers's 1981 through 1984 tax years. J.A. 30-32. It is now more than ten years since the assessments were made. If petitioner were to prevail in this action by obtaining a refund of the amounts collected by levy, it could potentially be too late for the IRS to collect the Cullers's unpaid taxes from other sources.

c. The carefully reticulated statutory provisions creating the wrongful-levy remedy thus reflect a legislative recognition that protracted disputes over tax collection impair the government's ability to protect its revenues. Congress enacted those provisions in light of the Treasury Department's expressed concern that, "[s]ince after seizure of property for nonpayment of taxes a district director [of Internal Revenue] is likely to suspend further collection activities against the taxpayer, it is essential that he be advised promptly if he has seized property which does not belong to the taxpayer." *Hearings on H.R. 11256 and H.R. 11290 Before the House Comm. on Ways and Means*, 89th Cong., 2d Sess. 36, 57-58 (1966) (*House Hearings*) (statement of Stanley S.

Surrey, Assistant Secretary of the Treasury). The Treasury Department sought the provision suspending its limitation period on collection actions against the taxpayer during the pendency of a wrongful-levy action for a similar reason. *Id.* at 56.[4]

Courts have repeatedly recognized that the nine-month limitation period for a wrongful-levy suit reflects Congress's concern that challenges to the IRS's tax collection efforts from third-party sources must be promptly resolved. See, *e.g.*, *Dahn* v. *United States*, 127 F.3d 1249, 1253 (10th Cir. 1997) (nine-month limitation "effectuated Congress' judgment" that government needs to know quickly if it must collect from an alternate source); *Gordon* v. *United States*, 649 F.2d 837, 843 (Ct. Cl. 1981) ("Congress was clearly concerned that levy contests more than 9 months after the levy would prevent ultimate collection of the tax, thereby endangering the federal treasury."); *United Sand & Gravel Contractors, Inc.* v. *United States*, 624 F.2d 733, 739 (5th Cir. 1980) ("[Section] 6532(c) protects the legitimate interest of the United States in requiring other claimants of the seized property to bring their claims quickly."). As the Tenth Circuit reasoned in *Dieckmann* v. *United States*, 550 F.2d 622 (1977) (per curiam), the nine-month period balances the "rights and duties of the individual" and the "needs of the government" by pro-

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[4] See also *House Hearings* 72 (statement of Laurens Williams, Chairman, Special Committee on Federal Liens, American Bar Association) ("A short (9 month) statute of limitations is provided, because it is important to get such controversies decided quickly so the Government may pursue the taxpayer's own property if it made a mistake the first time. The statute of limitations for collecting a corresponding amount from the taxpayer would be suspended during the pendency of such a controversy.").

viding a sufficient window of opportunity for owners of property who "exercise reasonable diligence in looking after it" while mandating relatively prompt filings so as "to permit the [IRS] to function with some reasonable dispatch." *Id.* at 624.

d. Petitioner suggests (Pet. Br. 21) that the respective limitation periods for bringing a wrongful-levy action and a tax-refund suit are not "materially different." That suggestion is at odds with the facts of this case; the difference is obviously "material" here, because petitioner's action is barred under one limitation period but not the other. More generally, there is in fact a significant difference between the limitation periods for tax-refund and wrongful-levy actions. Under 26 U.S.C. 6532(c), a wrongful-levy suit generally must be brought within nine months after the levy. That period can be extended by at most 12 additional months if the claimant properly puts the IRS on notice that it disputes the levy within the initial nine-month period. 26 U.S.C. 6532(c)(2). That provision underscores that, in all events, the IRS needs notice of the dispute within nine months.

By contrast, a tax-refund suit may be brought many years after a challenged tax is paid. Section 6511(a) allows an administrative refund claim to be filed up to two years after a tax is paid or up to three years after a return is filed, whichever is later, and 26 U.S.C. 6532(a) permits the filing of a tax-refund suit up to two years after the IRS disallows the refund claim. The combined effect of those provisions is to create a limitation period of at least four years, plus the additional time period during which the IRS is considering the administrative refund claim. The limitation period for tax-refund suits is therefore at least twice as long as the limitation pe-

riod for wrongful-levy suits, a difference that courts have consistently recognized as significant.

2. Congress understood that the availability of any other remedy to third parties was "problematic"

Congress enacted Section 7426 to fill a perceived gap in the then-existing remedial scheme for wrongful levies. Congress believed that the existence of any effective remedy for third parties whose property had been levied upon to collect the taxes of another was, at a minimum, "problematic." See *Block*, 461 U.S. at 285; *Brown*, 425 U.S. at 828. Section 7426 resolved that problem, providing a specific mechanism to implement Congress's view that "where the Government levies on property which, in part at least, a third person considers to be his, he is entitled to have his case heard in court." S. Rep. No. 1708, 89th Cong., 2d Sess. 29 (1966).

Section 7426 was enacted in 1966 against a background understanding that no tax-refund remedy against the government was available for third parties who sought to challenge tax levies as wrongful. Although tax-refund suits by taxpayers were permitted directly against the government under Section 1346(a)(1) at that time, see *Flora*, 362 U.S. at 148-156, the Committee Reports explained that "[u]nder present law * * *, the United States cannot be sued by third persons where its collection activities interfere with their property rights." S. Rep. No. 1708, *supra* at 29; H.R. Rep. No. 1884, 89th Cong., 2d Sess. 27 (1966) (same). That rule was understood to apply when "the Government wrongfully levies on one person's property in attempting to collect from a taxpayer," because courts had not found a waiver of sovereign immunity that allowed a nontaxpayer to sue the United States for an al-

legedly wrongful tax levy. *Ibid.*; see, *e.g.*, *Phillips* v. *United States*, 346 F.2d 999, 1000 (2d Cir. 1965); *First Nat'l Bank* v. *United States*, 265 F.2d 297, 300 (3d Cir. 1959).

Petitioner claims (Pet. Br. 17-19) that the legislative history of Section 7426 "cannot be fairly read" to demonstrate that Congress enacted the statute to provide a remedy in situations where wronged parties had previously been without relief. To be sure, the Senate Report acknowledged that actions against individual IRS employees were available in at least some jurisdictions, noting that "some courts" had allowed "suits to be brought against [IRS] district directors." S. Rep. No. 1708, *supra*, at 29; accord H.R. Rep. No. 1884, *supra*, at 27. But such suits were viewed as both inadequate and inappropriate mechanisms for challenging IRS levies. S. Rep. No. 1708, *supra*, at 29 (noting that "present law does not adequately take into account rights of third parties"); accord H.R. Rep. No. 1884, *supra*, at 27. Thus, the Senate Report concluded that it is "more appropriate" to bring such an action "directly against the Government," S. Rep. No. 1708, *supra*, at 29, and Congress replaced any remedy against individual IRS employees with an exclusive remedy directly against the United States under Section 7426. See 26 U.S.C. 7426(d) and (e). That was the Treasury Department's understanding at the time, and it so informed Congress. See *House Hearings* 57 (statement of Stanley S. Surrey, Assistant Secretary of the Treasury) ("The remedy provided by new section 7426 will be the exclusive means of

redress for actions which may be brought under this section.").[5]

3. Congress created a detailed, comprehensive scheme

Other provisions of the 1966 Act confirm that Congress intended Section 7426 to be a comprehensive scheme providing the sole remedy for wrongful levies on the property of third parties. Section 7426 provides both pre- and post-deprivation relief, allowing a party to file suit "without regard" to whether the property in which it claims an interest "has been surrendered to or sold by" the government. 26 U.S.C. 7426(a)(1). Section 7426 also delineates the only forms of relief that a court has jurisdiction to provide, authorizing an injunction against a levy or sale, recovery of the property, or a money judgment in an amount determined in accordance with specific statutory rules, 26 U.S.C. 7426(b), plus interest. 26 U.S.C. 7426(g).[6] In addition, Section 7426

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[5] The cases to which petitioner cites (Pet. Br. 6-7) for the proposition that third parties affected by allegedly wrongful levies had an available remedy even before the enactment of Section 7426 are, with one exception, cases brought against individual officers of the IRS, and thus are the types of actions that the drafters of Section 7426 considered insufficient. The sole exception, *United States* v. *Worley*, 213 F.2d 509 (6th Cir. 1954), cert. denied, 348 U.S. 917 (1955), provides no support for petitioner, because in that case the court of appeals ultimately found that there was no jurisdiction to enter judgment against the United States. *Id.* at 512. In any event, to the extent that a handful of courts had allowed actions directly against the government despite the established principle that the United States cannot be sued absent an applicable waiver of sovereign immunity, the important point for present purposes is that Congress did not believe such suits were available at the time it enacted Section 7426. See *Brown*, 425 U.S. at 828.

[6] As noted, see note 3, *supra*, in 1998 Congress provided for additional damages if the court finds that any officer or employee of the IRS

restricts the issues that a third party can litigate: for claims under Section 7426, "the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid." 26 U.S.C. 7426(c).

Further evidence that Congress viewed the remedy in Section 7426(a)(1) as exclusive is Congress's creation of distinct jurisdictional and venue provisions for actions brought under Section 7426. Congress did not rely upon the pre-existing jurisdictional grant in Section 1346(a)(1) over civil actions for the recovery of erroneously collected taxes. See 28 U.S.C. 1346(a)(1). Instead, Congress created a new subsection (e) within Section 1346 to grant district courts jurisdiction over "any civil action against the United States provided in section 7426." See 1966 Act, § 202(a), 80 Stat. 1148, codified, as subsequently amended, at 28 U.S.C. 1346(e). Moreover, Congress created a specific venue provision for Section 7426 actions. § 202(b), 80 Stat. 1149. In contrast to the venue provision for tax-refund actions, which generally allows a plaintiff to sue the government "in the judicial district where the plaintiff resides," 28 U.S.C. 1402(a), Congress permitted the United States to be sued under Section 7426(a)(1) "only in the judicial district where the property is situated at the time of levy." § 202(b), 80 Stat. 1149, codified at 28 U.S.C. 1402(c). Allowing a third party to choose between a tax-refund suit or a wrongful-levy action would permit the circumvention

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"recklessly or intentionally, or by reason of negligence, disregarded any provision" of Title 26. 26 U.S.C. 7426(h)(1); see IRS Reform Act, § 3102(b), 112 Stat. 730.

of that restriction in cases where the two venues are distinct.[7]

4. Principles of sovereign immunity dictate that Section 7426 is an exclusive remedy

Under principles of sovereign immunity, any doubt about whether Section 7426(a)(1) is an exclusive remedy must be resolved in favor of the government. See *BP Am. Prod. Co.* v. *Burton*, 127 S. Ct. 638, 646 (2006). It is axiomatic that the United States cannot be sued unless Congress has waived the government's sovereign immunity, and such waivers are strictly construed. See, *e.g.*, *United States* v. *Nordic Vill., Inc.*, 503 U.S. 30, 33, 34, 37 (1992); *United States* v. *Dalm*, 494 U.S. 596, 608 (1990). Terms and conditions that Congress attaches to the legislative waiver of sovereign immunity are also strictly construed. *Block*, 461 U.S. at 287. "A statute of limitations requiring that a suit against the Government be brought within a certain time period is one of those terms." *Dalm*, 494 U.S. at 608; see *Block*, 461 U.S. at 287.

Thus, when a party fails to commence a suit against the United States within the limitation period, the government has not waived its sovereign immunity, and the courts lack jurisdiction to entertain the suit. *Dalm*, 494 U.S. at 608-610. And even when Congress has provided one statute of limitations for a general class of actions,

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[7] Petitioner's reliance (Pet. Br. 20) on *Radzanower* v. *Touche Ross & Co.*, 426 U.S. 148 (1976), and *Morton* v. *Mancari*, 417 U.S. 535 (1974), is misplaced. In both cases, the Court held that subsequently-enacted general statutes did not impliedly repeal earlier, more specific statutes. See *Radzanower*, 426 U.S. at 153-154, 158; *Morton*, 417 U.S. at 550-551. If anything, those cases support the exclusivity of the more specific provision in Section 7426(a)(1).

it nevertheless can "provide less liberally for particular actions which, because of special considerations, require[] different treatment." *A.S. Kreider Co.*, 313 U.S. at 447. Congress has done precisely that with respect to wrongful-levy actions under Section 7426(a)(1). To allow parties in petitioner's situation to avoid that limitation on Congress's waiver of the United States' sovereign immunity by filing a tax-refund action, would improperly permit Congress's "careful and thorough remedial scheme to be circumvented by artful pleading." *Brown*, 425 U.S. at 833.

5. The court of appeals correctly held that Section 7426(a)(1) provides petitioner's exclusive remedy

Given the "balance, completeness, and structural integrity" of the wrongful-levy remedy, the court of appeals correctly held that Section 7426(a)(1) afforded the exclusive remedy available to petitioner to assert its claim, and that petitioner could not circumvent the limitation period applicable to such actions by pursuing a tax-refund suit under 28 U.S.C. 1346(a)(1). That decision is in accord with a substantial line of precedent in which courts of appeals have rejected claims, including tax-refund claims, by property owners who were subject to an IRS levy to collect another's taxes, but who failed to challenge the levy within the limitation period provided by 26 U.S.C. 6532(c). See, *e.g.*, *Audio Invs.* v. *Robertson*, 67 Fed. Appx. 795, 797 (4th Cir. 2003) (per curiam) (unpublished) (holding that a third party who "failed to timely file a wrongful levy action * * * cannot circumvent this exclusive remedy by filing a quiet title action"); *Miller* v. *Tony & Susan Alamo Found.*, 134 F.3d 910, 916-917 (8th Cir. 1998) (holding that, where Section 7426(a)(1) applies, a garnishment action

premised on 28 U.S.C. 2410 is foreclosed); *Dahn*, 127 F.3d at 1253 (rejecting "attempt to circumvent the § 7426/§ 6532 time-bar" by invoking other "remedial sources," including Section 1346(a)(1));[8] *Williams* v. *United States*, 947 F.2d 37, 39 (2d Cir. 1991) (holding that the "two-year period set forth in section 6532(a)(1) for a refund of taxes does not apply" and that a wrongful-levy action is the "sole remedy available to an individual * * * who claims an interest in property that has been levied upon by the IRS for the purpose of satisfying the tax liability of another person"), cert. denied, 504 U.S. 942 (1992); *United Sand*, 624 F.2d at 738-739 (rejecting quiet-title claim brought by property owner under 28 U.S.C. 2410 more than nine months after a challenged levy on the ground that his "exclusive remedy" was a wrongful-levy action under Section 7426). But see *WWSM Investors* v. *United States*, 64 F.3d 456 (9th Cir. 1995) (discussed at pp. 30-32, *infra*).[9]

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[8] See *Dahn* v. *United States*, No. 93-C-953, 1996 WL 652787, at *4 (D. Utah Aug. 30, 1996) (stating that Dahn invoked 28 U.S.C. 1346(a)(1)).

[9] Even those courts that have suggested that challenges to levies by third parties may be labeled as other types of actions have nevertheless applied the statute of limitations for wrongful-levy actions. See *Gordon*, 649 F.2d at 843-844 (refusing to apply six-year statute of limitations generally applicable to claims brought under the jurisdiction of the Tucker Act, 28 U.S.C. 1491); *Dieckmann*, 550 F.2d at 623-624 (holding that an equitable action brought against the government 14 months after a levy on plaintiffs' property was barred by the nine-month limitation period of 26 U.S.C. 6532(c)).

C. This Court's Decision In *United States* v. *Williams* Does Not Affect The Exclusivity Of The Section 7426(a)(1) Remedy

1. Petitioner errs in contending (Pet. Br. 10-12, 22-23) that a different result is required by this Court's decision in *United States* v. *Williams*, 514 U.S. 527 (1995). In that case, the Court held that Williams, who had paid under protest a tax that the IRS had assessed against her ex-husband, had standing to bring a refund action under 28 U.S.C. 1346(a)(1). The Court rejected the government's argument that tax-refund suits were available only to "taxpayers" against whom the taxes at issue had actually been assessed. 514 U.S. at 532-536.

In so holding, the Court concluded that none of the remedies that are potentially available to a third party when the IRS pursues her assets to satisfy the tax liability of another was "realistically open to Williams." *Williams*, 514 U.S. at 536. In particular, the Court observed that she could not have filed a wrongful-levy action under Section 7426, because the collection measure at issue was a tax *lien* rather than a *levy*: "[i]f the Government has not levied on property—as it has not levied on Williams' home—the owner cannot challenge such a levy under 26 U.S.C. § 7426." *Ibid.* Thus, emphasizing that Williams was otherwise "without a remedy," the Court concluded that "Congress did not intend refund actions under § 1346(a)(1) to be unavailable to persons situated as Lori Williams is." *Ibid.*; see *id.* at 529 ("[Williams] had no realistic alternative to payment of a tax she did not owe, and we do not believe Congress in-

tended to leave parties in respondent's position without a remedy.") (footnote omitted).[10]

Petitioner contends (Pet. Br. 12) that *Williams* "must * * * stand for the proposition that Congress did not generally intend for 28 U.S.C. § 1346 to be unavailable to third parties." But the *Williams* Court did

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[10] In the wake of *Williams*, Congress enacted 26 U.S.C. 6325(b)(4)(A) and 7426(a)(4), which give persons in Williams' situation a remedy apart from a tax-refund suit. See IRS Reform Act, § 3106(a) and (b)(1), 112 Stat. 732-733. Section 6325(b)(4)(A) allows a third party whose property is subject to a tax lien to request a certificate of discharge of the lien on his property and provides that the IRS shall issue such a certificate if the property owner provides a deposit or a bond for an amount equal to the government's interest in the property. Section 7426(a)(4) allows a property owner who receives a certificate of discharge to file a civil action against the government in federal district court within 120 days after the certificate is issued "for a determination of whether the value of the interest of the United States (if any) in such property is less than the value determined by the Secretary." 26 U.S.C. 7426(a)(4).

Section 7426(a)(4) further provides that "[n]o other action may be brought by such person for such a determination." 26 U.S.C. 7426(a)(4). To the extent that this language reflects Congress's intent to make the remedy under Section 7426(a)(4) an exclusive one, that does not suggest that the pre-existing wrongful-levy remedy in Section 7426(a)(1) is not exclusive in situations to which it applies. Congress may have thought it necessary to include an exclusivity provision in Section 7426(a)(4) to address the situation in *Williams*; no such express provision was necessary in Section 7426(a)(1) because *Williams* does not suggest that a third party may pursue a tax-refund remedy in situations, like allegedly wrongful levies, for which Congress has provided a specific remedy. Moreover, Section 7426(a)(4), enacted in 1998 in direct response to this Court's decision in *Williams*, sheds no light on the intent of the 1966 Congress. In 1966, Congress clearly was not legislating against the backdrop of a Supreme Court case finding a remedy. If anything, Congress's preference for a relatively short statute of limitations in this context is consistent with the basic judgment reflected in 26 U.S.C. 6532(c) that the IRS needs relatively prompt notice of third-party challenges to its collection efforts.

not address the question whether third parties could sue under Section 1346(a)(1) in circumstances other than those presented in that case. And in particular, *Williams* sheds no light on the question whether a tax-refund suit would be available to a third party who, unlike Williams herself, *did* have an opportunity to seek relief under a separate statutory scheme specifically created to remedy the type of alleged wrong at issue. As the Tenth Circuit explained in *Dahn*, the *Williams* Court "was concerned solely with the reach of § 1346 per se; the exclusivity of a concurrent § 7426 claim was never in issue." 127 F.3d at 1253.

Petitioner thus errs in contending that *Williams* provides support for its effort to evade the constraints imposed by Congress on the wrongful-levy remedy. Indeed, this Court rejected a similar argument in *United States* v. *Demko*, 385 U.S. 149 (1966). In that case, the Court held that 18 U.S.C. 1426 provides the exclusive remedy for injuries suffered by a federal prisoner while performing work in prison, and precludes a prisoner's resort to the general remedy of the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671 *et seq.* See *Demko*, 385 U.S. at 383-385. The Court reached that result notwithstanding its earlier holding in *United States* v. *Muniz*, 374 U.S. 150 (1963), that two prisoners who were *not* covered by the prison compensation law could seek relief under the Federal Tort Claims Act. *Id.* at 160 & n.17. The *Demko* Court reasoned that "[t]he decision in *Muniz* could not possibly control our decision here because [the prisoner-claimant here] is protected by the prison compensation law." 385 U.S. at 153. That reasoning applies equally to this case as well.

Petitioner also attributes significance (Pet. Br. 11) to the Court's observation in *Williams* that a tax-refund

suit is a post-deprivation remedy, while wrongful-levy, quiet-title, and separate-fund actions are pre-deprivation remedies. 514 U.S. at 538. The distinction between pre- and post-deprivation remedies was significant in *Williams* because Williams had no "realistic[]" opportunity for pre-deprivation relief (*id.* at 536), and the Court declined in those circumstances to deny her post-deprivation relief. That distinction has no force here, however, where petitioner had available to it both a pre- and post-deprivation remedy under Section 7426(a)(1). As noted, the owner of property subject to levy may challenge the levy either before or after the property has been surrendered to (or sold by) the IRS, 26 U.S.C. 7426(a)(1), as long as it does so within the limitation period set forth in 26 U.S.C. 6532(c).[11]

Furthermore, nothing in *Williams* calls into question the long line of authorities recognizing the need for a speedy resolution of property disputes where the IRS levies on a third party's property for the collection of another's unpaid taxes. See pp. 17-18, *supra*. Despite the general language of Section 1346(a)(1), Congress "provid[ed] less liberally" for parties whose property

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[11] As petitioner suggests (Pet. Br. 22; see *id.* at 12), because Section 7426(a)(1) is both a pre- and post-deprivation remedy, it would not be rendered altogether "superfluous" if a post-deprivation tax-refund remedy were also available, because the restrictions applicable to wrongful-levy actions would continue to apply to third parties seeking a pre-deprivation remedy. But rendering a statute superfluous in fully half its applications is no small feat. Allowing third parties to resort to the Section 1346(a)(1) post-deprivation remedy would permit them to circumvent the restrictions of Section 7426 in post-deprivation situations, thereby rendering the restrictions superfluous in cases such as this one, notwithstanding Congress's unambiguous decision to encompass post-deprivation relief within the wrongful-levy remedial scheme.

has been subjected to such a levy because of "special considerations, requir[ing] different treatment." *A.S. Kreider Co.*, 313 U.S. at 447; see, *e.g.*, *United Sand*, 624 F.2d at 738. As the court below and the Tenth Circuit have properly recognized, *Williams* did not "overturn, sub silentio, the separate and well-established principle that § 7426 provides the exclusive remedy for a wrongful levy." *Dahn*, 127 F.3d at 1253; accord Pet. App. 5a-6a. Moreover, Congress's response to *Williams* only underscores the need for prompt notice to the IRS when third parties challenge the IRS's collection efforts. See note 10, *supra*.

2. As petitioner notes (Pet. Br. 12-14), in *WWSM Investors* v. *United States*, 64 F.3d 456 (1995), the Ninth Circuit interpreted this Court's decision in *Williams* to open the door to tax-refund actions for third parties, like petitioner, who could avail themselves of the Section 7426(a)(1) remedy. That decision is incorrect.

In *WWSM Investors*, a third party subject to an IRS levy filed an untimely wrongful-levy action, and then moved for leave to amend the complaint to include a claim for a tax refund under 28 U.S.C. 1346(a)(1). Although the Ninth Circuit held that the Section 7426 claim was time-barred, it held that WWSM Investors "may file suit for a refund under 28 U.S.C. § 1346(a)(1)." 64 F.3d at 459. The Ninth Circuit believed that this Court's decision in *Williams* "control[led]" the case because it viewed the levy in *WWSM Investors* as "functionally equivalent" to Williams's payment to discharge the lien in *Williams*. *Ibid.* As the dissent in *WWSM Investors* correctly observed, however, this Court's decision in *Williams* acknowledged the critical difference between liens and levies and "recognized that Williams could not use the remedy of 26 U.S.C. § 7426 because

there was no levy." *Id.* at 459 (Brunetti, J., dissenting). As such, the decision in *Williams* "did not allow that a non-levy remedy under § 1346(a)(1) was available when the exclusive levy remedy under § 7426 was barred by the statute of limitations." *Id.* at 459-460 (Brunetti, J., dissenting).

WWSM Investors was decided shortly after this Court's decision in *Williams*.[12] No other court of appeals has followed the Ninth Circuit in reading *Williams* to open federal courts to tax-refund suits by parties who could have brought a timely wrongful-levy action but failed to do so. To the contrary, both the Fifth Circuit in this case and the Tenth Circuit in *Dahn* have noted, but have declined to follow, the Ninth Circuit's approach. Pet. App. 6a; *Dahn*, 127 F.3d at 1253 & n.2.[13] Moreover, apart from refund actions, courts of appeals (including the Ninth Circuit) have continued to reject attempts to circumvent the limitation period on wrongful-levy actions through the use of other types of claims. See *Audio Invs.*, 67 Fed. Appx. at 797 (rejecting a quiet-title

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[12] This Court decided *Williams* on April 25, 1995. 514 U.S. 527. The Ninth Circuit issued its initial decision in *WWSM Investors* on May 31, 1995; after the government filed a petition for rehearing, the court replaced its initial opinion with a majority opinion and a dissent on August 22, 1995. See 64 F.3d at 456-457.

[13] The IRS has issued a Revenue Ruling agreeing with *Dahn* and the approach taken below, and rejecting the Ninth Circuit's holding in *WWSM Investors*. See Rev. Rul. 05-49, 2005-30 I.R.B. 126 (2005). The IRS reasons that this Court's decision in *Williams* was premised on the Court's conclusion that "in the absence of a refund suit, the third person would have no meaningful judicial remedy." *Ibid.* Noting "the established principle that section 7426 is the exclusive remedy in the case of a wrongful levy," the IRS indicated its intent to continue to hew to that longstanding view. *Ibid.*; see *House Hearings* 57 (statement of Stanley S. Surrey, Assistant Secretary of the Treasury).

action); *Miller* v. *Tony & Susan Alamo Found.*, 134 F.3d 910, 916 (8th Cir. 1998) (rejecting garnishment action); *Fidelity & Deposit Co.* v. *City of Adelanto*, 87 F.3d 334, 335 (9th Cir. 1996) (rejecting quiet-title action).

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

STATUTORY PROVISIONS INVOLVED

1. 26 U.S.C. 6325 provides, in pertinent part:

Release of lien or discharge of property

* * * * *

(b) Discharge of property

* * * * *

(4) Right of substitution of value

(A) In general

At the request of the owner of any property subject to any lien imposed by this chapter, the Secretary shall issue a certificate of discharge of such property if such owner—

(i) deposits with the Secretary an amount of money equal to the value of the interest of the United States (as determined by the Secretary) in the property; or

(ii) furnishes a bond acceptable to the Secretary in a like amount.

(B) Refund of deposit with interest and release of bond

The Secretary shall refund the amount so deposited (and shall pay interest at the overpayment rate under section 6621), and shall release such bond, to the extent that the Secretary determines that—

(i) the unsatisfied liability giving rise to the lien can be satisfied from a source other than such property; or

(ii) the value of the interest of the United States in the property is less than the Secretary's prior determination of such value.

(C) Use of deposit, etc., if action to contest lien not filed

If no action is filed under section 7426(a)(4) within the period prescribed therefor, the Secretary shall, within 60 days after the expiration of such period—

(i) apply the amount deposited, or collect on such bond, to the extent necessary to satisfy the unsatisfied liability secured by the lien; and

(ii) refund (with interest as described in subparagraph (B)) any portion of the amount deposited which is not used to satisfy such liability.

(D) Exception

Subparagraph (A) shall not apply if the owner of the property is the person whose unsatisfied liability gave rise to the lien.

2. 26 U.S.C. 6502 provides, in pertinent part:

Collection after assessment

(a) Length of period

Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun—

(1) within 10 years after the assessment of the tax, or

(2) if—

(A) there is an installment agreement between the taxpayer and the Secretary, prior to the date which is 90 days after the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer at the time the installment agreement was entered into; or

(B) there is a release of levy under section 6343 after such 10-year period, prior to the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer before such release.

If a timely proceeding in court for the collection of a tax is commenced, the period during which such tax may be collected by levy shall be extended and shall not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable.

(b) Date when levy is considered made

The date on which a levy on property or rights to property is made shall be the date on which the notice of seizure provided in section 6335(a) is given.

* * * * *

3. 26 U.S.C. 6503 provides, in pertinent part:

Suspension of running of period of limitation

* * * * *

(f) Wrongful seizure of or lien on property of third party

(1) Wrongful seizure

The running of the period under section 6502 shall be suspended for a period equal to the period from the

date property (including money) of a third party is wrongfully seized or received by the Secretary to the date the Secretary returns property pursuant to section 6343(b) or the date on which a judgment secured pursuant to section 7426 with respect to such property becomes final, and for 30 days thereafter. The running of such period shall be suspended under this paragraph only with respect to the amount of such assessment equal to the amount of money or the value of specific property returned.

(2) Wrongful lien

In the case of any assessment for which a lien was made on any property, the running of the period under section 6502 shall be suspended for a period equal to the period beginning on the date any person becomes entitled to a certificate under section 6325(b)(4) with respect to such property and ending on the date which is 30 days after the earlier of—

(A) the earliest date on which the Secretary no longer holds any amount as a deposit or bond provided under section 6325(b)(4) by reason of such deposit or bond being used to satisfy the unpaid tax or being refunded or released; or

(B) the date that the judgment secured under section 7426(b)(5) becomes final.

The running of such period shall be suspended under this paragraph only with respect to the amount of such assessment equal to the value of the interest of the United States in the property plus interest, penalties, additions to the tax, and additional amounts attributable thereto.

* * * * *

4. 26 U.S.C. 6511 provides, in pertinent part:

Limitations on credit or refund

(a) Period of limitation on filing claim

Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.

* * * * *

5. 26 U.S.C. 6532 provides, in pertinent part:

Periods of limitation on suits

(a) Suits by taxpayers for refund

(1) General rule

No suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary renders a decision thereon within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

(2) Extension of time

The 2-year period prescribed in paragraph (1) shall be extended for such period as may be agreed upon in writing between the taxpayer and the Secretary.

* * * * *

(c) Suits by persons other than taxpayers

(1) General rule

Except as provided by paragraph (2), no suit or proceeding under section 7426 shall be begun after the expiration of 9 months from the date of the levy or agreement giving rise to such action.

(2) Period when claim is filed

If a request is made for the return of property described in section 6343(b), the 9-month period prescribed in paragraph (1) shall be extended for a period of 12 months from the date of filing of such request or for a period of 6 months from the date of mailing by registered or certified mail by the Secretary to the person making such request of a notice of disallowance of the part of the request to which the action relates, whichever is shorter.

6. 26 U.S.C. 7422 provides, in pertinent part:

Civil actions for refund

(a) No suit prior to filing claim for refund

No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for

refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

(b) Protest or duress

Such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

* * * * *

(f) Limitation on right of action for refund

(1) General rule

A suit or proceeding referred to in subsection (a) may be maintained only against the United States and not against any officer or employee of the United States (or former officer or employee) or his personal representative. Such suit or proceeding may be maintained against the United States notwithstanding the provisions of section 2502 of title 28 of the United States Code (relating to aliens' privilege to sue) and notwithstanding the provisions of section 1502 of such title 28 (relating to certain treaty cases).

(2) Misjoinder and change of venue

If a suit or proceeding brought in a United States district court against an officer or employee of the United States (or former officer or employee) or his personal representative is improperly brought solely by virtue of paragraph (1), the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action commenced, upon proper service of process on the United

States. Such suit or proceeding shall upon request by the United States be transferred to the district or division where it should have been brought if such action initially had been brought against the United States.

* * * * *

(j) Cross references

(1) For provisions relating generally to claims for refund or credit, see chapter 65 (relating to abatements, credit, and refund) and chapter 66 (relating to limitations).

(2) For duty of United States attorneys to defend suits, see section 507 of Title 28 of the United States Code.

(3) For jurisdiction of United States district courts, see section 1346 of Title 28 of the United States Code.

(4) For payment by the Treasury of judgments against internal revenue officers or employees, upon certificate of probable cause, see section 2006 of Title 28 of the United States Code.

7. 26 U.S.C. 7426 provides, in full:

Civil actions by persons other than taxpayers

(a) Actions permitted

(1) Wrongful levy

If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the

United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary.

(2) Surplus proceeds

If property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property junior to that of the United States and to be legally entitled to the surplus proceeds of such sale may bring a civil action against the United States in a district court of the United States.

(3) Substituted sale proceeds

If property has been sold pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), any person who claims to be legally entitled to all or any part of the amount held as a fund pursuant to such agreement may bring a civil action against the United States in a district court of the United States.

(4) Substitution of value

If a certificate of discharge is issued to any person under section 6325(b)(4) with respect to any property, such person may, within 120 days after the day on which such certificate is issued, bring a civil action against the United States in a district court of the United States for a determination of whether the value of the interest of the United States (if any) in such property is less than the value determined by the Secretary. No other action may be brought by such person for such a determination.

(b) Adjudication

The district court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:

(1) Injunction

If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

(2) Recovery of property

If the court determines that such property has been wrongfully levied upon, the court may—

(A) order the return of specific property if the United States is in possession of such property;

(B) grant a judgment for the amount of money levied upon; or

(C) if such property was sold, grant a judgment for an amount not exceeding the greater of—

(i) the amount received by the United States from the sale of such property, or

(ii) the fair market value of such property immediately before the levy.

For the purposes of subparagraph (C), if the property was declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount equal to the minimum price determined pursuant to such section or (if

larger) the amount received by the United States from the resale of such property.

(3) Surplus proceeds

If the court determines that the interest or lien of any party to an action under this section was transferred to the proceeds of a sale of such property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale.

(4) Substituted sale proceeds

If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

(5) Substitution of value

If the court determines that the Secretary's determination of the value of the interest of the United States in the property for purposes of section 6325(b)(4) exceeds the actual value of such interest, the court shall grant a judgment ordering a refund of the amount deposited, and a release of the bond, to the extent that the aggregate of the amounts thereof exceeds such value determined by the court.

(c) Validity of assessment

For purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid.

(d) Limitation on rights of action

No action may be maintained against any officer or employee of the United States (or former officer or employee) or his personal representative with respect to any acts for which an action could be maintained under this section.

(e) Substitution of United States as party

If an action, which could be brought against the United States under this section, is improperly brought against any officer or employee of the United States (or former officer or employee) or his personal representative, the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action was commenced upon proper service of process on the United States.

(f) Provision inapplicable

The provisions of section 7422(a) (relating to prohibition of suit prior to filing claim for refund) shall not apply to actions under this section.

(g) Interest

Interest shall be allowed at the overpayment rate established under section 6621—

(1) in the case of a judgment pursuant to subsection (b)(2)(B), from the date the Secretary receives the money wrongfully levied upon to the date of payment of such judgment;

(2) in the case of a judgment pursuant to subsection (b)(2)(C), from the date of the sale of the property wrongfully levied upon to the date of payment of such judgment; and

(3) in the case of a judgment pursuant to subsection (b)(5) which orders a refund of any amount, from the date the Secretary received such amount to the date of payment of such judgment.

(h) Recovery of damages permitted in certain cases

(1) In general

Notwithstanding subsection (b), if, in any action brought under this section, there is a finding that any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregarded any provision of this title the defendant shall be liable to the plaintiff in an amount equal to the lesser of $1,000,000 ($100,000 in the case of negligence) or the sum of—

(A) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional or negligent disregard of any provision of this title by the officer or employee (reduced by any amount of such damages awarded under subsection (b)); and

(B) the costs of the action.

(2) Requirement that administrative remedies be exhausted; mitigation; period

The rules of section 7433(d) shall apply for purposes of this subsection.

(3) Payment authority

Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

(i) Cross reference

For period of limitation, see section 6532(c).

8. 28 U.S.C. 1346 provides, in pertinent part:

United States as defendant

(a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of :

(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;

* * * * *

(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 6226, 6228(a), 7426, or 7428 (in the case of the United States district court for the District of Columbia) or section 7429 of the Internal Revenue Code of 1986.

* * * * *

9. 28 U.S.C. 1402 provides, in pertinent part:

United States as defendant

(a) Any civil action in a district court against the United States under subsection (a) of section 1346 of this title may be prosecuted only:

(1) Except as provided in paragraph (2), in the judicial district where the plaintiff resides;

(2) In the case of a civil action by a corporation under paragraph (1) of subsection (a) of section 1346, in the

judicial district in which is located the principal place of business or principal office or agency of the corporation; or if it has no principal place of business or principal office or agency in any judicial district (A) in the judicial district in which is located the office to which was made the return of the tax in respect of which the claim is made, or (B) if no return was made, in the judicial district in which lies the District of Columbia. Notwithstanding the foregoing provisions of this paragraph a district court, for the convenience of the parties and witnesses, in the interest of justice, may transfer any such action to any other district or division.

* * * * *

(c) Any civil action against the United States under subsection (e) of section 1346 of this title may be prosecuted only in the judicial district where the property is situated at the time of levy, or if no levy is made, in the judicial district in which the event occurred which gave rise to the cause of action.

* * * * *